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September 4, 2014

The Honorable Patrick J. Schiltz, District Judge
U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

Re: United States v Keith Michael Novak
Criminal No. 14-44 (PJS)

Dear Judge Schiltz:

I write in response to your September 2, 2014, letter to counsel regarding the parties' dispute concerning the application of a two-level enhancement under § 2B1.1(b)(11) of the U.S. Sentencing Guidelines. We appreciate the opportunity to respond to the government's argument that subsection (C)(i) of the guideline should apply.

In addition to addressing the manner in which this argument was first raised by the government, we also intend to argue that subsection (C)(i) is inapplicable in the circumstances of this case because no "other means of identification" was produced or obtained as a result of the conduct underlying Mr. Novak's offense. In advancing this argument, we intend to rely on the guideline and application note and background commentary accompanying it, as well as the following cases: (1) *United States v. Williams*, 355 F.3d 893, 900 (6th Cir. 2003); (2) *United States v. Melendrez*, 389 F.3d 829, 833 n.7 (9th Cir. 2004); and (3) *United States v. Johnson*, 421 F. App'x 533, 535 (6th Cir. 2010).

Sincerely,

STINSON LEONARD STREET LLP

A handwritten signature in blue ink, appearing to read "J. Mason", written over the printed name of Jeffrey Mason.

Jeffrey Mason